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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

B.I.P. CORPORATION, PLAINTIFF, V. MITEC TELECOM, INC., AND DOES 1 TO 30, DEFENDANT.	Case No. 3:08-cv-313 B.I.P. CORPORATION'S COMPLAINT AGAINST MITEC TELECOM, INC. MISAPPROPRIATION OF TRADE SECRETS; FRAUD AND DECEIT; INTERFERENCE OF PROSPECTIVE ECONOMIC ADVANTAGE; BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING; BREACH OF CONTRACT Judge: Marilyn L. Huff SECOND AMENDED COMPLAINT

Plaintiff alleges:

I. FIRST CAUSE OF ACTION

MISAPPROPRIATION OF TRADE SECRETS-CUSTOMER LIST

1. Defendant Mitec Telecom, Inc., (Mitec) at all times mentioned herein was a Canada corporation qualified to do business in California.

2. Plaintiff B.I.P. Corporation (B.I.P.) is a business entity incorporated in California with its primary office in the City of San Marcos, County of San Diego, among other things B.I.P. resells telecommunications products.

3. The transaction, occurrence, or series of transactions took place in the City of San Marcos,

County of San Diego.

4. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does 1 through 30, inclusive, and therefore sues defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

5. Plaintiff purchases and resells telecommunications equipment.

6. Mitec is a manufacturer of telecommunications equipment and was B.I.P.'s sole supplier of high powered transceivers.

7. Plaintiff sells telecommunications equipment to customers throughout the world and after entering into a confidentially agreement provided defendant with contact information of its customers for the purpose of drop shipping the equipment directly from Mitec's warehouse to B.I.P.'s customers.

8. To protect B.I.P.'s proprietary customer information, it has routinely entered into non-disclosure agreements with its suppliers, vendors, contractors and employees.

9. On or about June 2, 2005, B.I.P. and Mitec, by and through their officers, agents, or employees met in the City of San Marcos, California and entered into a mutual written non-disclosure agreement (non-disclosure agreement) by and through Al Hatset on behalf of B.I.P. and Eric Gregoire on behalf of Mitec.

10. Among other things the non-disclosure agreement defines "confidential information" to mean any information pertaining to customers.

11. Among other things the non-disclosure agreement states that: "Each party agrees not to use any confidential information disclosed to it by the other party for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the relationship."

12. The non-disclosure agreement specifically states that the agreement "...shall survive any termination of the relationship between the parties, and shall continue...five years following the date of this agreement, or (ii) three (3) years from the date on which confidential is last disclosed under this agreement."

13. The non-disclosure agreement also states that the agreement shall be governed by and construed and enforced in accordance with the internal laws of the state of California.

14. On or about July 25, 2006, B.I.P. and Mitec entered into a written "bill and hold agreement" whereby it was agreed that B.I.P. would purchase product which would be segregated by defendant and stored in defendant's warehouse in space set aside for B.I.P. purchases. This agreement was executed by Al Hatset on behalf of B.I.P. and Stefano Bazzocchi on behalf of Mitec.

15. Among other things the "bill and hold agreement" specifically provided that Mitec would be responsible for any defects and would retrofit or exchange any defective product.

16. Among other things the "bill and hold agreement" also provided for a 24 month warranty on all "VSAT" products and extended the warranty to 29 months, if the product were held at Mitec's warehouse facility for a period of no less than 2 months from the date of Mitec's invoice to B.I.P..

17. On or about October 24, 2006, defendant Mitec, through its agents, officers, or employees, personally met with plaintiff in the City of San Marcos and negotiated for an increase in the sale of telecommunications products with plaintiff B.I.P..

18. In 2007, B.I.P. entered into several purchase agreements by issuing purchase orders to Mitec totaling approximately $3.5 million dollars.

19. From on or about December 2006 to on or about January 2007, Mitec shipped large numbers of defective equipment to B.I.P.'s customers, with a defective rate of approximately 50%.

20. B.I.P. communicated its concerns to Mitec and on or about January 8, 2007, defendant Mitec's vice-president of sales, Robert Mitchell, had a personal meeting with B.I.P.'s Chief Executive Office, Al Hatset in the City of San Marcos, California, following the complaints for unusually high defective rates.

21. On or about January 8, 2007, Robert Mitchell admitted that Mitec had actual knowledge that the power supplies in the equipment sold to B.I.P. and shipped to B.I.P.'s customers were defective.

22. On or about May, 2007, plaintiff demanded defendant recall all product and test it to insure it was free of defects.

23. On or about June 6, 2007, defendant reassured the telecommunications equipment had been

recalled and repaired, specifically Mitec's sales manager Manuel Perez, communicated to plaintiff by Email that Mitec had finished the rework process," on recalled units and was preparing all to re-insert all of the units in [the cage]."

24. On or about August 19, 2007, Mitec's Chief Executive Officer Daniel Piergentili stated during a conference call with B.I.P.'s Chief Executive Officer Al Hatset that all units in question have been recalled, retested and confirmed to be in working condition.

25. The fair market value of the equipment purchased by plaintiff B.I.P. and remaining in defendant's warehouse, if it had been in good working condition would have had a fair market value of approximately $2 million dollars.

26. On or about June, 2007, plaintiff requested that Mitec ship all product purchased by B.I.P. and in defendant possession to be shipped to plaintiff's primary place of business in San Marcos, California for B.I.P. to inspect.

27. Plaintiff was in possession of a customer list with customers that regularly purchased high powered transceivers from plaintiff. The list was a result of a substantial amount of time, energy, and money on the part of plaintiff.

28. Plaintiff's customer list had economic value in that it contained information not generally known to the public or the trade and in that it represented years of research, communication and relationship building. Plaintiff made reasonably sure the information remained secret by providing only that information those employees, vendors, and suppliers who needed the information to perform their duties, and only after signing a confidentiality agreement.

29. Plaintiff B.I.P. Corporation made a reasonable effort to maintain the information secret and to protect the information in its dealings with defendant Mitec by entering into a written confidentiality agreement with Mitec, that was executed on or about June 2, 2005, by Eric Gregoire on behalf of Mitec and Al Hatset on behalf of B.I.P..

30. Plaintiff B.I.P. disclosed its customers to Mitec for the purpose of shipping product directly

from defendant Mitec's warehouse facility after the confidentiality agreement was signed.

31. Defendant Mitec knew or should have known plaintiff B.I.P.'s customer information was disclosed in confidence and it knew or should have know the customer information was proprietary information, because the confidentiality agreement specified that customer information was confidential.

32. On or about May 2007, Mitec by and through its vice-president of sales Robert Mitchell commenced soliciting purchase orders from plaintiff's customers by contacting B.I.P.'s customers by making personal visits to B.I.P.'s customers, by telephone, by Email, and by facsimile.

33. On or about May 2007, Mitec by and through its agent, officer, or employee Manuel Perez, commenced soliciting purchase orders from plaintiff's customers by telephone, Email and facsimile.

34. On or about May, 2007 Al Hatset on behalf of B.I.P. communicated by phone Mitec's vice-president of sales that Mitec cease soliciting purchase orders from B.I.P.'s customers.

35. Upon discovering that Mitec had breached the confidentiality agreement and was soliciting business from B.I.P.'s customers, B.I.P.'s agent Alex Stanton communicated with Mitec by Email and Phone and demanded it cease communicating with B.I.P.'s customers.

36. On or about May 2007, Mitec's vice president of sales Robert Mitchell, requested B.I.P.'s customer list on the promise that it needed the list to insure it did not compete with plaintiff and to refrain from soliciting orders from plaintiff's customers.

37. On or about June 21, 2007, B.I.P.'s Chief Executive Officer Al Hatset orally communicated to Mitec's Chief Executive Officer Daniel Piergentili to cease soliciting purchase orders from B.I.P.'s customers. B.I.P. Chief Executive Officer Al Hatset flew to Montreal specifically to

meet with Mitec's Chief Executive Officer Daniel Piergentili to request Mitec to cease soliciting purchase orders from B.I.P. customers.

38. Plaintiff's customer list was a trade secret which merited legal protection from defendant's misappropriation in that defendant solicited the customers in B.I.P.'s customer list with the intent to injure plaintiff; (2) plaintiff is informed and believes and thereon alleges that defendant sought out certain preferred customers whose trade is particularly profitable and whose identities are not generally known to the trade; (3) in the telecommunications industry a customer ordinarily patronizes only one vendor once the products have been deemed to be reliable; (4) established business relationships between customers and the plaintiff normally continue unless interfered with.

39. On or about May 2007 defendant, and each of them, misappropriated the above-described plaintiff's customer list by soliciting sales from the customers listed in plaintiff's customer list. Defendant, and each of them, knowingly and intentionally solicited business from plaintiff's customers by offering the same telecommunications equipment purchased by plaintiff, at lower prices, and then proceeded to cancelling all warranties on any telecommunications equipment sold by plaintiff to these same customers.

40. As a proximate result of defendant's, and each of them, actions plaintiff suffered economic harm in that it cannot resell the telecommunications equipment that would have had a fair market value of approximately $2 million dollars, as a result of lost future sales, and lost profits from sales to customers on B.I.P.'s customer list.

II. SECOND CAUSE OF ACTION -FRAUD AND DECEIT

41. Plaintiff hereby incorporate by reference and realleges all of the allegations contained in paragraphs 1 through 40.

42. From on or about December 2006 to on or about July 2007, Mitec, and each of them, knowingly and intentionally shipped defective product directly from its warehouse to plaintiff's customers.

43. On or about May 2007 B.I.P. communicated to Mitec that all equipment be recalled and tested before making any additional shipments.

44. From on or about June 2006 to on or about July of 2007, defendant, and each of them, represented to B.I.P. that all the products had been recalled taken from storage, tested, free of defects, and returned to plaintiff's cage. Specifically on or about June of 2007 to on or about July 2007, Alex Stanton, on behalf of B.I.P. received Emails from Robert Mitchell, Mitec's vice-president of sales, and Manuel Perez, Mitec's sales manager, that the equipment had been tested and repaired.

45. On or about June 6, 2007, Manuel Perez, sales manager for Mitec, sent an Email, on behalf of Mitec, to Alex Stanton that stated that all recalled product had been reworked and tested and would be placed in plaintiff's cage.

46. Defendant's, representation by and through its agents, officers, or employees to B.I.P., including Emails received from Manuel Perez were false, because in fact the product had been tested and repaired and continued to arrive to B.I.P.'s customers with defects.

47. Defendant, and each of them, knew or should have known that the representation was false when it made it, or made the representation recklessly and without regard for its truth, because on

or about December of 2007, Marina Lissianskia a Mitec Senior Engineer acknowledged through an Email to B.I.P. that there was a problem with the high powered transceivers; and on or about January 2007, Mite's vice president of sales orally communicated in person, in San Marcos, California to Al Hatset, that it had actual knowledge that the power supplies were defective; and or about June, 2007 to on or about July, 2007, Mitec's vice-president of sales Robert Mitchell and Mitec's sales manager, Manuel Perez, communicated to B.I.P.'s agent Alex Stanton that the equipment had been tested and repaired, but the equipment continued to arrive dead on arrival, with defective power supplies and continued to fail from the power supplies from on or about June 2007 to on or about June 2008.

48. Defendant, and each of them intended for plaintiff to rely on the representation, because the product continued to arrive with defects, and on or about August 2007, during a telephone conference, Mite's Chief Executive Officer knowingly and intentionally communicated over the phone that the product was free from defects to B.I.P.'s Chief Executive Officer, Al Hatset and B.I.P.'s agent Alex Stanton, and the product continued and continues to fail because of defects.

49. Defendant, and each of them, intended for plaintiff to rely on the representation, because Mite had actual knowledge of the defects, knew the equipment had not been repaired and knew it would incur great expense to test and repair the equipment.

50. Plaintiff, reasonably relied on defendant's representation that the product had been tested and in working order, and had no reason to believe defendant would be misrepresent a material fact, because the "bill and hold agreement," specifically stated Mite would warrant all product to be free of defect and repair any defects at its expense.

51. As a direct result of B.I.P.s reliance on defendant, and each of them, plaintiff has suffered economic harm, because it received defective equipment cannot be sold in its current state and

can only be sold after substantial expense in testing and repairing.

52. On or about July 25, 2006, defendant, and each of them, represented to plaintiff in writing through the bill and hold agreement that all product would be free of defects for a period of 2 years and 29 months for product purchased and stored in plaintiff's cage at defendant's facility prior to shipping, and also that the warranty would extend to plaintiff's customers.

53. Defendant, and each fo them, made a false representation about the product warranty on product sold to plaintiff for resale, because on or about August 2007, Mitec's Chief Financial officer Bruno Dumais communicated by Email to B.I.P.'s agent Alex Stanton that all warranties on all purchases made by B.I.P. were voided.

54. On or about August 16, 2007, Mitec's agent, officer, contractor or employee Bruno Dumais reaffirmed that the warranties had been unilaterally voided in an Email to B.I.P.'s agent Alex Stanton.

55. Defendant knew that the representation that all its product was warranted was false when it made it, or made the representation recklessly and without regard for its truth, because it was a means of inducing plaintiff to purchase large quantities of equipment from MITEC, and then MITEC would reap the benefit from selling B.I.P. product that were defective and unsalable.

56. Defendant, and each of them, intended for plaintiff to rely on the representation as it was a means of persuading plaintiff to purchase large quantities of high power transceivers that were not saleable.

57. Plaintiff reasonably relied on the representation since it had no reason to believe otherwise, as it was part of a written "bill and hold agreement."

58. As direct and proximate result of defendant's mis representation, plaintiff suffered economic

harm, in that it could not resell the equipment purchased without testing and repairing at great expense.

59. Plaintiff's reliance on defendant's, and each of them, representation that the product was warranted was a substantial factor in causing harm to plaintiff, because (1) B.I.P.'s reputation with its customers was damaged; (2) it purchased large quantities of product that cannot be resold without testing and repairing at great expense; and (3) B.I.P. has assumed liability for large quantities of defective equipment.

60. On or about June 2, 2005, Defendant, and each of them, by and through its agent, officer, or employee Eric Gregoire represented to plaintiff in writing that it would not use plaintiff's confidential information including, customer information by signing a confidentiality agreement, and MITEC further represented by and through its vice-president of sales Robert Mitchell assured that it would not solicit sales from B.I.P.'s customers would not compete with plaintiff's customers if plaintiff's provided a complete customer list to insure it would not compete directly with plaintiff.

48. Defendant's, and each of them, representations were false, and in fact defendant, and each of them, commenced soliciting sales from plaintiff's customers at a date unknown to plaintiff, but at least since on or about or about May 2007.

49. Defendant, and each of them, knew the representation was false when it made it, or made the representation recklessly without regard for its truth, because MITEC solicited plaintiff's customers following disclosure of B.I.P.'s customer information.

50. Defendant, and each of them, intended for plaintiff to rely on the representation, as it was part of a confidentiality agreement and would have been the only means of obtaining plaintiff's complete customer list and would have resulted in control of a list customers that had been

regularly purchasing product manufactured by defendant.

51. Plaintiff reasonably relied on defendant's representation as it was the only means of insuring defendant would know who it could not solicit sales from in direct competition with plaintiff, and because it had been agreed that this list would remain confidential and not used for defendant's use.

52. As a proximate result of defendant's mis representation, plaintiff suffered economic harm in lost sales, lost profits, lost future profits, and loss of business reputation.

53. Plaintiff's reliance on defendant's representation was a substantial factor in causing it harm, since plaintiff would not have provided its customer list if it had known defendant intended to use it to compete directly with plaintiff instead of refraining from competition with plaintiff.

54. Defendant, and each of them, made false promises to plaintiff, by promising that (1) its product would be free of defects; (2) a warranty would apply for 2 years and 29 months for product purchased and stored in plaintiff's cage prior to shipping. and that the warranty would extend to its customers; (3) that it would keep plaintiff's customer list confidential and that it would use plaintiff's customer list to refrain from competing directly with plaintiff, in return plaintiff agreed to purchase telecommunications equipment from defendant and provided its list of customers to defendant.

55. Defendant's, and each of them, promises to plaintiff, were important to the transaction as it provided an incentive for plaintiff to purchase product from defendant and it assured plaintiff that defendant would not compete directly with plaintiff for sales to its customer.

56. Defendant, did not intend to perform these promises when made, because it shipped defective product, it cancelled the warranties and it misappropriated plaintiff's customer list and solicited plaintiff's customers almost immediately following disclosure of plaintiff's customer list.

57. Defendant, and each of them, intended for plaintiff to rely on these promises, as it was a means of securing sales from plaintiff and plaintiff's customers and it was a means of obtaining a list of customers that could only be obtained through great expense.

58. Plaintiff reasonably relied on defendant's promises as the promises did not seem out of the ordinary and seemed reasonable to achieve the objectives of the non-disclosure agreement.

59. Defendant did not perform the promised acts, and delivered defective product to plaintiff or on plaintiff's behalf, cancelled all warranties, and misappropriated plaintiff's customer list.

60. As proximate result of defendant's, and each of them, failure to perform as promised, plaintiff suffered economic harm from loss of sales, future sales, profits, future profits, and loss of business reputation, and loss of customers.

61. Plaintiff's reliance, on defendant's promise was a substantial factor in causing its harm, as plaintiff would not have entered into the agreement with defendant to purchase telecommunications equipment and would not have provided its customer list, had it known defendant did not intend to keep its promises.

62. Defendant's, and each of them, conduct was fraudulent and therefore plaintiff is entitled to exemplary damages.

III. THIRD CAUSE OF ACTION

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS

63. Plaintiff hereby incorporate by reference and realleges all of the allegations contained in paragraphs 1 through 62.

64. From on or about January 2003 through on or about June 2007 plaintiff had an economic relationship with over 100 customers.. These customers regularly purchased product from

plaintiff every year with sales often reaching $100,000 per customer per year.

65. Defendant, and each of them, knew of the economic relationship between plaintiff and its customers, because MITEC knew B.I.P. was reselling the transceivers and was providing the names and addresses of its customers to Mitic for the purpose of direct shipping from defendant's warehouse to B.I.P.'s customers.

66. MITEC, and each of them, agreed not use any customer identifying information provided by B.I.P. for its own use.

67. Commencing at a date unknown to plaintiff, but at least since on or about May of 2007, defendant, and each of them, by and through its vice-president of sales, Robert Mitchell intended to disrupt the relationship between B.I.P. and its customers, by soliciting sales through direct personal face to face contact with B.I.P.'s customers, by communicating over the telephone, by communicating through facsimile, and by communicating by Email. On or about August 16, 2008, Mitec's vice-president of sales Robert Mitchell sent out a letter to all B.I.P.'s customers, identifying them as MITEC customers and encouraged B.I.P.'s customers to make purchases directly from MITEC.

68. Defendant, and each of them, engaged in wrongful conduct by misappropriating plaintiff's trade secrets, by breaching the confidentiality agreement, by breaching the covenant of good faith and fair dealing, by obtaining plaintiff's customer list through fraud and deceit, and by breaching the covenant not to compete with plaintiff.

69. Defendant, and each of them, misappropriated plaintiff's trade secrets by using plaintiff's list of customers to disrupt the relationship between plaintiff and its customers by directly soliciting plaintiff's customers and offering lower prices to plaintiff's customers.

70. Defendant, and each of them, breached the covenant of good faith and fair dealing, by

knowingly and intentionally disrupting the economic relationship between plaintiff and its customers, and in effect depriving B.I.P. of the benefit of the bargain under the contract by diverting sales of high powered transceivers from B.I.P. to MITEC.

71. Defendant, and each of them, knowingly and intentionally breached the covenant of good faith and fair dealing, by knowing and intentionally preventing B.I.P. from enjoying the benefits of bargain of the written agreement non-disclosure agreement and the written bill and hold agreement, because defendant MITEC used B.I.P.'s customer information for its own use in violation of the non disclosure agreement and unilaterally cancelled all warranties in direct violation of the written bill and hold agreement.

72. Plaintiff's customers would have continued to purchase high powered transceivers from plaintiff, but for defendant's, and each of them, disruption of the economic relationship between plaintiff and its customers.

73. As a proximate result of defendant's, and each them, actions plaintiff's customers purchased telecommunications equipment from defendant, and each them, instead of plaintiff and thereby plaintiff suffered an economic loss.

74. Defendant's, and each of them, conduct was a substantial factor in causing economic harm to plaintiff.

75. If defendant had not interfered with plaintiff's customers, plaintiff would have enjoyed the benefits of its economic relationship with its customers in the form of continued sales and profits.

76. As a direct and proximate result of defendant's, and each of them, actions plaintiff suffered economic harm in the form of lost sales, profits, loss of business reputation, and loss of marketability of inventory in plaintiff's possession.

77. Defendant's, and each of them, conduct was malicious in that defendant, and each of them, engaged in conduct that was intended by defendant, and each of them, to cause economic injury to plaintiff, in that it knowingly and intentionally sought out sales directly from B.I.P.'s customers and knowingly and intentionally caused sales to be diverted from B.I.P. to MITEC.

78. Defendant's and each of them, knowingly and intentionally used privileged information to contact plaintiff's customers, to solicit sales by offering the same product offered plaintiff B.I.P. at lower prices and by knowingly shipping defective product on behalf of B.I.P..

79. Defendant's conduct, and each of them, was malicious, in that plaintiff intended to cause economic injury to plaintiff, by knowingly and intentionally shipping defective product on B.I.P.'s behalf and continued to ship out defective product on B.I.P.'s behalf after receiving complaint's from B.I.P..

80. Defendant's, and each of them, conduct was malicious in that defendant, and each of them, engaged in conduct that was despicable conduct which was carried on by the defendant, and each of them, with a willful and conscious disregard of the rights of plaintiff, because defendant, and each of them, (1) knowingly and intentionally misappropriated plaintiff's trade secrets by contacting B.I.P.'s customers on B.I.P.'s customer list and soliciting sales; (2) by offering lower prices to plaintiff's customers than to plaintiff; (3) by cancelling all warranties on any product sold by plaintiff; (4) by knowingly and intentionally shipping defective product; and (5) by knowingly and intentionally misrepresenting the merchantability and quality of the product; (6) and by stating that the defective product purchased by plaintiff's B.I.P. customers carried no warranty when purchased form B.I.P..

81. Defendant's, and each of them, conduct was fraudulent, in that defendant, and each of them, intentionally misrepresented through deceit and concealment a material fact known to the

defendant with the intent on the part of the defendant, and each of them, to deceive and knowingly and intentionally concealed: (1) their true intentions about plaintiff's customer identifying information; (2) the merchantability of the product; (3) and the warranties on high powered transceivers sold to B.I.P. and thereby Mitec deprived plaintiff of its exclusive list of customers, of sales to these customers, of receiving transceivers in working condition for resale, of profits to B.I.P. from sales of high powered transceivers, and created liability to plaintiff on defective product sold to B.I.P. causing economic injury to plaintiff. Had plaintiff known that it was the intent of defendant, and each of them, to use privileged customer information provided by B.I.P.'s for their own use, then plaintiff would not have provided the list of its customers or entered into a bill and hold purchasing agreement with defendant Mitec.

82. Defendant, and each of them, intentionally misrepresented that it would use plaintiff's list of customers to refrain from soliciting sales from B.I.P.'s customers, with the intent of using the list to solicit plaintiff's customers therefore caused economic injury to plaintiff in the form of lost sales, lost profits, and loss of business reputation. Had plaintiff known that it was the intent of defendant, and each of them, to contact plaintiff's customers, then plaintiff would not have provided the list of its customers.

83. Defendant's, and each of them, conduct was malicious and fraudulent, and therefore plaintiff is entitled to exemplary damages.

IV. FOURTH CAUSE OF ACTION

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

84. Plaintiff hereby incorporate by reference and realleges all of the allegations contained in paragraphs 1 through 83.

85. On or about June 2, 2005, B.I.P. and Mitec entered into a non disclosure written agreement.

The agreement was executed by Eric Gregoire, Mitec's sales manager, and Al Hatset, B.I.P.'s Chief Executive Officer.

86. Because plaintiff would be providing customer identifying information to Mitec for the purpose of direct shipment of transceivers from defendant's warehouse to B.I.P.'s customers, the non-disclosure agreement would protect plaintiff's customer identifying information from misappropriation and personal use by MITEC.

87. On or about July 25, 2006, B.I.P. and MITEC entered into a written bill and hold agreement. The agreement was executed by Al Hatset on behalf of B.I.P. and Stefano Bazzocchi on behalf of MITEC. Among other things the agreement provided for warehousing of product purchased by B.I.P. and provided for a 24 month warranty on the transceivers, and extended the warranty if the product was kept at the warehouse for a period of at least 2 months.

88. As a result of these written contracts B.I.P. would receive the benefit protection on its privileged customer information, savings on shipping costs, and guarantees and assurances on the merchantability of the transceivers purchased for resale.

89. Plaintiff, performed substantially all of the significant things that the contract required including the purchase of approximately $5 million dollars worth of product from defendant.

90. All conditions required for defendant's performance had occurred, but defendant, and each of them, intentionally interfered with B.I.P.'s right to receive the benefits of the contracts, by voiding all warranties, knowingly and intentionally shipped defective product, and misappropriating plaintiff's customer list by seeking sales directly from B.I.P.'s customers.

91. Plaintiff has performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the contract

92. Defendant, and each of them, interfered with plaintiff's right to receive the benefits of the contract, by (1) misappropriating plaintiff's customer list and directly competing with plaintiff for the same customer and thereby depriving plaintiff of virtually all sales and profits on the sale of high powered transceivers; (2) by knowingly and intentionally shipping defective product and cancelling all warranties and thereby exposing plaintiff to liability on all defective product forcing plaintiff to bear the risk defendant was to bear.

93. As a proximate result of defendant's, and each of them, actions plaintiff suffered economic harm in the form of lost sales, lost profits, lost future sales, lost future profits, lost of its customer base, exposure to liability, and loss of business reputation.

V. FIFTH CAUSE OF ACTION BREACH OF CONTRACT

94. Plaintiff hereby incorporate by reference and realleges all of the allegations contained in paragraphs 1 through 93

95. On or about June 2, 2005, B.I.P., entered into a mutual non-disclosure agreement, that among other things required that defendant MITEC maintain B.I.P.'s customer information confidential and not use it for its own use. This agreement was executed in the City of San Marcos, California by Al Hatset on behalf of B.I.P. and Eric Gregoire on behalf of MITEC.

96. On or about July 25, 2006, B.I.P. entered into a bill and hold agreement that among other things provided that MITEC would warrant all product purchased for a period of 24 months and would extend the warranty to 29 months for all equipment purchased and stored in defendant's warehouse for a period of at least 2 months. This agreement was executed by Al Hatset on behalf of B.I.P. and Stefano Bazzocchi on behalf of MITEC.

97. B.I.P. did all or substantially all that was required under the confidentially agreement and the bill and hold agreement, or was excused from having to do so..

98. All the conditions occurred that required Mitec perform. B.I.P. purchased equipment from MITEC and disclosed confidential customer information for the purpose of shipping produce to these customers. B.I.P. purchased product that was stored in defendant's warehouse facility and paid for the same.

99. B.I.P. disclosed confidential customer information and therefore MITEC was required to refrain from using this information for its own use. B.I.P. purchased substantial quantities of equipment from MITEC that were stored in defendant's warehouse facility and a substantial number of units shipped from on or about December 2006 to on or about August 2007 had defective power supplies that had to be repaired pursuant to the bill and hold agreement.

100. Beginning at a time unknown to plaintiff, but at least since on or about May 2006, defendant MITEC breached the non-disclosure agreement by misappropriating B.I.P.'s customer information and using it for its own use to solicit sales from B.I.P.'s customers.

101. On or about June 2006, MITEC breached its bill and hold agreement by not honoring the warranties on equipment purchased by B.I.P. and not repairing the same.

102. As a result of Mitec's breach of the confidentiality agreement B.I.P. suffered economic harm,

because it could no longer sell high powered transceivers to its customers and therefore lost sales, profits, and goodwill.

103. As a result of the warranties voided by Mitec's under the bill and hold agreement MITEC breached the agreement and B.I.P. was harmed, because B.I.P. received transceivers that are defective and have a fair market value that is substantially lower than the cost to B.I.P..

104. As a result of the breach of the non-disclosure agreement B.I.P. suffered economic harm in a

sum in excess of $2 million dollars and B.I.P. is entitled to injunctive relief pursuant to the terms of the agreement.

105. As a result of the breach of the bill and hold agreement, B.I.P. suffered economic harm in a sum in excess of $2 million dollars.

WHEREFORE PLAINTIFF PRAYS FOR RELIEF AS FOLLOWS:

FIRST CAUSE OF ACTION- MISAPPROPRIATION OF TRADE SECRETS

1. For damages in the sum of $12 million dollars;

2. For exemplary and punitive damages;

3. For reasonable attorney fees and costs incurred;

4. For a court order to preclude defendant from the customers B.I.P. disclosed to defendant;

5. For any other and further relief as the court may deem proper.

SECOND CAUSE OF ACTION- FRAUD AND DECEIT

1. For damages in the sum of $12 million dollars;

2. For exemplary and punitive damages;

3. For reasonable attorney fees and costs incurred; and

4. For any other and further relief as the court may deem proper.

THIRD CAUSE OF ACTION- INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS

1. For damages in the sum of $12 million dollars;

2. For exemplary and punitive damages;

3. For reasonable attorney fees and costs incurred; and

4. For any other and further relief as the court may deem proper.

FOURTH CAUSE OF ACTION- BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

1. For damages in the sum of $12 million dollars;

2. For reasonable attorney fees and costs incurred; and

3. For any other and further relief as the court may deem proper.

FIFTH CAUSE OF ACTION-BREACH OF CONTRACT

1. For damages in the sum of $12 million dollars;

2. For reasonable attorney fees and costs incurred; and

3. For any other and further relief as the court may deem proper.

Dated:06/20/2008

/s/Arnold Hernandez

Arnold Hernandez,
Attorney for plaintiff